

EXHIBIT A

5-28 Federal Court Hearing.txt

1

F5S4LevC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 LASTONIA LEVISTON,

4 Plaintiff,

5 v.

15 CV 3989 (KPF)

6 CURTIS JAMES JACKSON, III
7 a/k/a 50 CENT,

8 Defendant.
9 -----x

New York, N.Y.
May 28, 2015
1:40 p.m.

10
11 Before:

12 HON. KATHERINE POLK FAILLA,

13 District Judge

14
15 APPEARANCES

16 NAPOLI BERN RIPKA SHKOLNIK
17 Attorney for Plaintiff
18 BY: HUNTER J. SHKOLNIK

19 -and-

20 FREIDIN DOBRINSKY BROWN ROSENBLUM
21 Attorney for Plaintiff
22 BY: PHILIP FREIDIN
JONATHAN E. FREIDIN
RANDY ROSENBLUM

23 -and-

24 SCHLAM STONE & DOLAN
25 Attorney for Plaintiff
BY: JONATHAN MAZER

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

2

F5S4LevC

1 APPEARANCES (CONTINUED)

5-28 Federal Court Hearing.txt

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BICKEL & BREWER
Attorney for Defendant
BY: STEPHANIE L. GASE
JAMES S. RENARD

ALSO PRESENT: PATRICK NELIGAN (BY TELEPHONE)

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

3

F5S4LevC

1 (In open court)
2 THE DEPUTY CLERK: In the matter of Lastonia Levi ston
3 versus Curtis James Jackson, III, also known as 50 Cent.
4 Counsel , please i denti fy yourself for the record,
Page 2

5-28 Federal Court Hearing.txt

5 beginning with plaintiff.

6 MR. SHKOLNIK: Good afternoon, your Honor. Hunter
7 Shkolnik from Napoli Bern Ripka Shkolnik. I have along with me
8 co-counsel in the case, who are not yet admitted pro hac, and I
9 would ask that they be allowed to introduce themselves and if
10 they can be admitted for the purposes of this hearing pro hac
11 in case they're needed.

12 THE COURT: Okay. Tell me who they are, please.

13 MR. P. FREIDIN: My name is Philip Freidin.

14 MR. J. FREIDIN: Jonathan Freidin.

15 MR. ROSENBLUM: Good afternoon, your Honor. Randy
16 Rosenblum.

17 MR. MAZER: Your Honor, I'm Jonathan Mazer from Schlam
18 Stone & Dolan. I'm New York counsel, so I am admitted.

19 THE COURT: You are admitted.

20 So Messrs. Freidin and Mr. Rosenblum are not admitted
21 to the Southern District of New York; is that correct?

22 MR. ROSENBLUM: That is correct, your Honor.

23 THE COURT: ARE each of you admitted to the New York
24 bar?

25 MR. SHKOLNIK: They're Florida attorneys and admitted

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

4

F5S4LevC

1 pro hac for the state court action, and they're all admitted to
2 the Florida bar and the Southern District of Florida.

3 MR. P. FREIDIN: Mr. Jonathan Freidin is not admitted
4 pro hac in the state court.

5 THE COURT: Mr. Jonathan Freidin, are you planning on
6 speaking today?

7 MR. J. FREIDIN: If it is an issue, I can defer to my
Page 3

5-28 Federal Court Hearing.txt

8 co-counsel here.

9 THE COURT: For now, Mr. Philip Freidin and
10 Mr. Rosenblum, I'm admitting you pro hac for purposes of this
11 proceeding.

12 Mr. Jonathan Freidin, we will see, but that may make
13 it a little bit easier.

14 Okay. There are folks at the back table; thankfully,
15 mercifully, fewer folks at the back table.

16 Please introduce yourselves.

17 MS. GASE: Yes, your Honor.

18 Stephanie Gase, Law Firm Bickel & Brewer, on behalf of
19 Mr. Jackson. I'm admitted in the Southern District. However,
20 my colleague, Mr. Renard, is not admitted in the Southern
21 District, and would also request that he be admitted pro hac
22 for purposes of this hearing.

23 THE COURT: All right. I will allow that. I am
24 allowing two for the front table, I might as well allow one for
25 the back.

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

5

F5S4LevC

1 We need to talk about Mr. Neligan.

2 MS. GASE: Yes, your Honor.

3 THE COURT: Okay.

4 MS. GASE: He is bankruptcy counsel.

5 THE COURT: That is the issue. In dialing him in, in
6 this courtroom, it complicates matters because this courtroom
7 was not designed to have folks participate by telephone.

8 So I want to understand, in the first instance, is he
9 necessary for you to make your arguments today? I don't wish
10 to compromise your ability to argue things. I just want to

5-28 Federal Court Hearing.txt

11 know whether he is signing on so that he can listen in or
12 whether he is needed.

13 Mr. Renard.

14 MR. RENARD: Your Honor, good afternoon. If I may?

15 THE COURT: Yes.

16 MR. RENARD: Your Honor, this case has been involved
17 in the litigation as long as our firm has been involved.

18 THE COURT: Which has been about two months, sir?

19 MR. RENARD: Two months.

20 THE COURT: Okay.

21 MR. RENARD: I even less so and even on a more
22 tangential basis.

23 Mr. Neligan does represent the entity in bankruptcy.
24 SMS, as I think the papers reflect, is a wholly owned entity by
25 Mr. Jackson. And actually, your Honor, he is in a much better

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

6

F5S4LevC

1 position certainly than I -- and I think I can speak on behalf
2 of Ms. Gase -- and Ms. Gase, to address the issues, your Honor,
3 applicable to this. So not only would it be helpful for
4 Mr. Neligan to participate, but I think it would be essential
5 to hear from Mr. Neligan because Ms. Gase and I have much less
6 to offer in terms of the mechanisms and reasons why Mr. Jackson
7 is important to the bankruptcy that has been filed.

8 So we would ask your Honor -- I regret the fact that
9 he is not able to be here. I know everyone is interested in
10 getting this done. I can say, if for any reason the Court
11 wanted to have a conference call later subject to your Honor's
12 availability, he would be available. He certainly could be
13 here tomorrow, but I'm not suggesting for a moment that

5-28 Federal Court Hearing.txt

14 anything be postponed. I understand the Court's and the
15 plaintiff's and all the parties' desire to get this addressed.
16 That's all I'm saying, is he is available by phone if there is
17 any way we can have him. Otherwise, I think the argument will
18 be a lot less than it could be without his participation.

19 THE COURT: Let me explain to you another concern that
20 I have that transcends the acoustical ones. It is that, to my
21 understanding, Mr. Neligan represents the SMS entity.

22 MR. RENARD: Yes.

23 THE COURT: I don't understand that he represents an
24 entity that is in the case before me now.

25 MR. RENARD: That is correct, your Honor. It is

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

7

F5S4LevC

1 Mr. Jackson's entity that is in bankruptcy. It is because of
2 that bankruptcy that this case has been removed, and
3 Mr. Neligan can far better address the efficiencies and the
4 reasons for the removal. I understand he does not represent
5 the defendant but they are related entities. Hearing from him
6 would benefit the Court greatly in understanding the reason for
7 the removal and the relationship between the pending bankruptcy
8 and this case that has been removed.

9 THE COURT: Mr. Skolnik, are you taking the laboring
10 work for the folks at the front table?

11 MR. SHKOLNIK: Yes, your Honor.

12 THE COURT: This is a little bit unorthodox, if you
13 will let me use that adjective, because normally I will have
14 folks speak to me when they represent someone in the case
15 before me. That said, I don't want this matter continued for
16 another period of time. I'm sure you don't, either.

5-28 Federal Court Hearing.txt

17 MR. SHKOLNIK: We don't.

18 THE COURT: Can I understand that you're not going to
19 be objecting to my hearing from Mr. Neligan as to what he
20 wishes to tell me about things bankruptcy-related?

21 MR. SHKOLNIK: Your Honor, we will not object to that
22 if it is going to result in a continuance of some type. We
23 don't believe he has standing to make the argument, but we're
24 not going to object, your Honor.

25 THE COURT: All right. I would like someone somehow

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

8

F5S4LevC

1 related to the defense to explain to me why things have
2 happened in the way they have. I'm sure you do, as well. For
3 this reason, we're going to have to bring him on board.

4 MR. SHKOLNIK: Yes, your Honor.

5 THE COURT: Mr. Lopez, could you please see if you can
6 obtain Mr. Neligan's presence by phone.

7 THE DEPUTY CLERK: Yes, your Honor.

8 THE COURT: Ms. Gase, while that's happening, I do see
9 you involved with some of the proceedings in the state court
10 that I have been looking at in preparation for this proceeding.
11 While I do think it may prove useful -- and Mr. Renard suggests
12 to me it may be necessary -- to have Mr. Neligan speak about
13 the bankruptcy issues, may I speak with you about the
14 procedural issues in the case; how we came to where we are, how
15 we came to the point prior to filing of bankruptcy by SMS.

16 Is that things as to which you have knowledge, or Mr.
17 Renard?

18 MS. GASE: Yes, your Honor.

19 THE COURT: Let's talk about what's happened prior to
Page 7

5-28 Federal Court Hearing.txt

20 the bankruptcy, and I can do that I think while we're trying to
21 secure the presence of Mr. Neligan, because again his focus is
22 on the bankruptcy.

23 Ms. Gase, you have received the motion for remand
24 and/or abstention that was filed yesterday?

25 MS. GASE: Yes, your Honor.

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

9

F5S4LevC

1 THE COURT: Have you also received the sort of
2 compendium; it's the declaration of Mr. Skolnik and a series of
3 documents that are attendant to that? Have you gotten that, as
4 well.

5 MS. GASE: Yes, your Honor, although I don't have
6 copies of the exhibits with me in court today.

7 THE COURT: I don't believe you need them.

8 Really, my question is much simpler than that. There
9 is a recitation of a series of events concerning the filing of
10 the litigation, the scheduling of trial, and certain
11 applications that were made to Justice Wooten.

12 Are you familiar with the recitation of facts
13 contained in the remand papers?

14 MS. GASE: Yes, your Honor, I'm generally familiar. I
15 have reviewed the papers.

16 Is there a specific section I can maybe direct my
17 attention to?

18 THE COURT: No, no. The question, hopefully, is
19 simpler. Without acceding to maybe editorial comments about
20 the timeliness or the reasons for certain things, is the
21 chronology that is set forth substantially accurate?

22 MS. GASE: Some of the times, I believe, are not
Page 8

5-28 Federal Court Hearing.txt

23 accurate.

24 THE COURT: Okay.

25 MS. GASE: For example, my understanding of when the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

10

F5S4LevC

1 notice of removal was filed -- that just comes to mind quickly
2 -- as being at 2:25 Tuesday is not an accurate statement. It
3 was filed before 11:00 a.m. that morning. I believe that that
4 was corrected. I was not at the hearing on Tuesday. I believe
5 that was corrected at the hearing by the clerk who accepted the
6 papers.

7 THE COURT: So I want to make sure we're talking about
8 the same thing. The Southern District Clerk's Office received
9 your notice of removal prior to 11:00 a.m. on Tuesday?

10 MS. GASE: Yes, your Honor.

11 THE COURT: Okay.

12 MS. GASE: As well as the Clerk's Office at New York
13 Supreme.

14 THE COURT: Okay. Essentially, rather than the
15 11 minutes, I think is a time frame that I'm being asked to
16 consider, it is closer to two and a half to three hours, is
17 what you're saying?

18 MS. GASE: Well, no. I think there are two different
19 things. Particularly, I was referencing what I believe it is
20 page 2 of the memo of law --

21 THE COURT: Yes.

22 MS. GASE: -- at the second full paragraph, where it
23 starts, "The defendant filed this notice of removal at the
24 state court at 2:25 --

25 THE COURT: I see.

5-28 Federal Court Hearing.txt

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

11

F5S4LevC

1 MS. GASE: Directly as to that statement.

2 THE COURT: You say, instead, the notice of removal in
3 the state court is prior to 11:00 a.m.?

4 MS. GASE: Correct.

5 THE COURT: Was anything filed at the federal court?

6 No?

7 MS. GASE: The notice of removal was filed at the
8 federal court.

9 THE COURT: Okay. At what time?

10 MS. GASE: Other than before 11:00 and before it was
11 sent to the state court, I can't really tell you the specific
12 time. I understand it was around 10:30.

13 THE COURT: Okay.

14 MS. GASE: That's my general understanding.

15 THE COURT: I want your best understanding.

16 Do we have Mr. Neligan?

17 THE DEPUTY CLERK: Yes, we do.

18 THE COURT: We're going to put Mr. Neligan on
19 momentarily.

20 Again, this is an unfortunate consequence of the setup
21 of this courtroom; only one of us will get to use the
22 microphone at one time. I'm going to share with him. I'm
23 going to take control when I need to.

24 Hold on, please.

25 Mr. Neligan, this is Judge Faiila. Are you hearing

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

12

F5S4LevC

5-28 Federal Court Hearing.txt

1 me, sir?

2 MR. NELIGAN: Yes, your Honor.

3 THE COURT: Mr. Neligan, I have been told by Mr.
4 Renard and Ms. Gase of the Bickel & Brewer firm that you are
5 particularly well suited to answer any questions that I may
6 have about bankruptcy.

7 But, sir, I have a couple of questions preliminary to
8 those questions that I'm going to be speaking about with
9 Ms. Gase. I'm going to ask you to sort of remain on the
10 line to listen as best you can as to what is going on in this
11 courtroom, and then I will turn to you, sir, when I need to
12 discuss bankruptcy issues with you. All right?

13 MR. NELIGAN: Thank you, your Honor.

14 Before I start, I wanted to know, do I need to file a
15 motion pro hac vice or am I allowed to appear?

16 THE COURT: I'm going to allow you to appear for
17 purposes of this proceeding because Mr. Renard has made clear
18 to me that you are important to their ability to communicate
19 their arguments to me in the most effective manner possible.

20 MR. NELIGAN: Thank you, your Honor.

21 THE COURT: Thank you, sir.

22 Ms. Gase, let me continue with you, then, and we will
23 talk more about what happened beforehand.

24 We're in agreement, however, that the removal papers
25 were filed before noon on the day that the trial was going to

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

13

F5S4LevC

1 begin; correct?

2 MS. GASE: Yes, your Honor.

5-28 Federal Court Hearing.txt

3 THE COURT: Other than that departure from the
4 chronology, as set forth in the plaintiff's moving papers, are
5 there other assertions regarding chronology with which you
6 disagree?

7 MS. GASE: I can't recall exactly where it is in the
8 papers, your Honor, but I do believe that counsel was informed
9 prior to 11:00 of the notice of removal as well as -- again, I
10 don't know what time the papers were handed up to the judge. I
11 believe it was around 11:15 that the judge was informed of the
12 notice of removal.

13 THE COURT: Okay. That was Tuesday of this week;
14 correct?

15 MS. GASE: Correct.

16 THE COURT: Monday was Memorial Day.

17 Monday were you participating in any meetings with
18 plaintiff's counsel regarding the trial?

19 MS. GASE: Yes, your Honor. I was going through the
20 exhibits, I believe, with Mr. Rosenblum.

21 THE COURT: In any of those meetings on Monday,
22 Memorial Day, did you discuss with your adversary the
23 possibility that there would be a notice of removal filed on
24 Tuesday?

25 MS. GASE: I did not, your Honor.

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

14

F5S4LevC

1 THE COURT: Could you tell me why not?

2 MS. GASE: At that point, I'm not sure whether or not
3 bankruptcy was finalized or not. Again, I'm not bankruptcy
4 counsel. I was not personally involved in the bankruptcy
5 aspect of this whatsoever. I was continuing forward to prepare

5-28 Federal Court Hearing.txt

6 for trial.

7 THE COURT: I will ask the question more pointedly.

8 At what moment in time did you first understand that there was
9 a possibility that the SMS entity was contemplating a
10 bankruptcy petition? When did you first know?

11 MS. GASE: Friday afternoon.

12 THE COURT: Friday afternoon.

13 At any point between Friday afternoon and Tuesday
14 morning, did you communicate to any of plaintiff's counsel the
15 possibility that this was going to happen?

16 MS. GASE: No, your Honor.

17 THE COURT: Okay. When did you know that it was a
18 likelihood, or when did you know it was a certainty? When did
19 you know it was going to be filed? At any time prior to
20 Tuesday morning?

21 MS. GASE: My understanding was it was sometime late
22 Monday evening.

23 THE COURT: Monday evening.

24 I suspect I know the answer to this: Did you
25 communicate to plaintiff's counsel then?

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

15

F5S4LevC

1 MS. GASE: No, your Honor.

2 THE COURT: Did you show up for trial on Tuesday?

3 MS. GASE: No, your Honor.

4 THE COURT: Because you assumed the bankruptcy was
5 going to at least temporarily or otherwise stay the trial?

6 I just want to know why they weren't told. I can
7 imagine, preparing for trial and getting things together and
8 then -- it is one thing to find out that your adversary has

5-28 Federal Court Hearing.txt

9 filed a petition for bankruptcy, or someone related to your
10 adversary has filed a petition for bankruptcy, but to not even
11 have their counsel tell you about it might be off-putting. I
12 want to understand what was going on. And if the answer is you
13 just didn't tell them, that's fine, too. If there is something
14 you can explain to me that gives me context, I would be happy
15 to hear it.

16 MS. GASE: Yes, your Honor. I believe we were waiting
17 to inform plaintiff's counsel until the bankruptcy had actually
18 been filed and finalized. My understanding is that we were
19 waiting for that on Tuesday morning. When I was informed of
20 that is when I sent off the letter and email to plaintiff's
21 counsel.

22 THE COURT: So just so I'm clear, the basis that is
23 being articulated for removal, is that under 1334(b), which is
24 original but not exclusive jurisdiction because of the
25 bankruptcy proceeding? Is that correct?

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

16

F5S4LevC

1 MS. GASE: The specific numbers --

2 THE COURT: I understand.

3 This case was removed because of the bankruptcy
4 petition filing and not because of any other federal question
5 claim or any other allegation of diversity; correct?

6 MS. GASE: That was the purpose. I do believe there
7 is diversity in this case. I believe the purpose of the
8 removal was based on the bankruptcy, your Honor.

9 THE COURT: You believe there is diversity in the
10 case?

11 MS. GASE: The parties are from different states, it

5-28 Federal Court Hearing.txt

12 is a controversy over 75,000. But I don't believe that was the
13 reason for the removal. I'm not saying that that was the
14 reason.

15 THE COURT: I do understand that.

16 Mr. Neligan, I'm going to talk to you for a moment,
17 sir.

18 Sir, I would like to understand, please, how it is
19 that the case in which you have been involved, which was filed
20 in Connecticut, is related to the case that is now before me.
21 Sir, because you would agree with me, would you not, that
22 Mr. Jackson is sued in his individual capacity in the case
23 before me; is that correct?

24 MR. NELIGAN: That is correct, your Honor, but there
25 is case law both in the First Circuit and other courts related

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

17

F5S4LevC

1 to jurisdiction regarding a showing that the litigation
2 conceivably could have an impact on the bankruptcy. Here it
3 would have a material impact. I think, if the Court doesn't
4 mind, if I could describe the company and Mr. Jackson's role
5 and then perhaps just address the timing.

6 SMS Promotions is a boxing promoter. They have a
7 number of boxers under contract. Initially, it looked like
8 there was three to five hundred thousand of debt. As we're
9 learning more, the amount of the debt could be substantially
10 higher. The claims include landlords claims, utility claims,
11 there are contract claims, there are potentially claims from
12 prior promotions, and there's another issue that has arisen.
13 Again, just for the record, I'm not necessarily admitting
14 liability or waiving defenses for SMS, but as the Court may be

5-28 Federal Court Hearing.txt

15 aware, in professional football, there has been a lot published
16 about concussions and the impact on professional football
17 players.

18 THE COURT: Speak a little slower and louder.

19 Thank you.

20 MR. NELIGAN: Yes, your Honor. I'm sorry.

21 THE COURT: No, no, that's okay.

22 MR. NELIGAN: There are also a number of other
23 potential claims, tort claims, that can arise from boxers with
24 concussions. Again, I want to make clear in the record that
25 SMS is not waiving defenses to those claims in the bankruptcy,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

18

F5S4LevC

1 but that is a concern we have with respect to the chapter 11
2 and how to deal with it.

3 THE COURT: All right.

4 MR. NELIGAN: Mr. Jackson is the sole manager. More
5 important, he is really only the viable party who can fund the
6 plan of reorganization. There are going to be contracts that
7 need to be rejected. There are some contracts that need to be
8 assumed with modifications. Mr. Jackson is really our only
9 viable option for funding the plan.

10 If the Court doesn't mind, let me address the timing
11 for a second, because I know from the plaintiff's standpoint,
12 they're looking at this from the standpoint of their client,
13 and I think you got to step back for a second because it is not
14 uncommon for a company or an individual, when they're in
15 substantial litigation, to not only look at what are settlement
16 possibilities, but in a worst-case scenario, how will the
17 judgment be paid. The net result of that is -- and Mr. Jackson

5-28 Federal Court Hearing.txt

18 is not the first person who has done this -- they begin looking
 19 at their liquidity, looking at their businesses, examining the
 20 different pools on the cash flow. The result of that is that
 21 in looking at his investments and businesses, it is clear that
 22 SMS Promotions needs to restructure its debt. It needs to
 23 address a number of these creditor claims in a way that makes
 24 sense and is orderly. The best way to do that is chapter 11.

25 I know there is, obviously, a concern about the

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

†

19

F5S4LevC

1 timing. In no small part, it is not unusual for a company or
 2 an individual, when there is potential for a large judgment, to
 3 really then focus on what that will mean after the fact. I say
 4 all this, I will tell you obviously the defense counsel feel
 5 very confident -- and I'm sure plaintiff's counsel does, as
 6 well -- but it would be foolish for a defendant not to examine
 7 the impact of a judgment, the impact of cash flow needs on his
 8 or her various businesses or investments. So it is not just a
 9 situation where litigation triggered the bankruptcy. It is the
 10 need to examine and analyze the business issues going forward
 11 and cash needs going forward.

12 THE COURT: Mr. Neligan, I get to speak now. Thank
 13 you.

14 MR. NELIGAN: I'm sorry.

15 THE COURT: I have a couple of questions about that
 16 because certainly I could understand this examination process
 17 that you've described if Mr. Jackson was looking at his
 18 individual liabilities and the liabilities that might attend to
 19 the lawsuit. But I find it odd that he would suddenly start
 20 worrying about SMS and its liabilities since SMS is not a party

5-28 Federal Court Hearing.txt

21 to this litigation and since I would have thought that one of
 22 the reasons Mr. Jackson is operating SMS as opposed to
 23 individually involving himself in the promotion of boxing is to
 24 limit the ability to which he could be liable, despite being
 25 the sole owner and manager. I would have thought that there

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

†

20

F5S4LevC

1 ought to be some respect for the corporate forum. So I'm
 2 having difficulty understanding why this litigation should
 3 prompt him to think about SMS's liquidity; and secondly, why I
 4 should worry about SMS's liquidity when they're not involved in
 5 this case at all.

6 I don't think, sir, that you're suggesting that there
 7 is going to be an alter ego issue here. Are you?

8 MR. NELIGAN: Your Honor, I would certainly hope not,
 9 but having practiced bankruptcy law for a long time, there are
 10 often circumstances where alter ego actions are brought. That
 11 said, Mr. Jackson's concern for his business is I think a
 12 natural part of looking at his various investments. And
 13 although he may not have -- I would hope he would have no
 14 personal liability for these debts -- and certainly that's our
 15 position -- ultimately whether or not this business and this
 16 investment makes sense and is going to be able to restructure
 17 its debt hinges on Mr. Jackson and his ability to fund. So
 18 while legally we would take the position, he would not have any
 19 personal liability on the creditor claims of bankruptcy, from a
 20 practical standpoint, in order to preserve the business and to
 21 pay those creditor claims, he is going to need to fund a plan
 22 of reorganization because there is really no other option for
 23 this company, no other realistic option for this company.

5-28 Federal Court Hearing.txt

24 While I know this Court is concerned solely about the
25 litigation, the fact remains that businesses owned by

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

21

F5S4LevC

1 Mr. Jackson will require his cash and will require further
2 investment.

3 From the standpoint of the chapter 11, it is critical
4 to have Mr. Jackson as an available funding source for the
5 plaintiff. And the issue relating to jurisdiction really goes
6 not to the party litigants but, rather, from the standpoint of
7 the chapter 11 debt and whether or not that litigation will
8 have an impact on the bankruptcy and the administration of the
9 bankruptcy.

10 THE COURT: Mr. Neligan, I would also like to
11 understand -- and perhaps I have misperceived the initial
12 bankruptcy filing in the District of Connecticut -- but there
13 has been no reference regarding the possibility of liability
14 for concussion lawsuits, nor did I understand the liabilities of
15 the SMS entity to exceed \$500,000.

16 Before you answer that, let me make this clear to you.
17 I am aware that things change and that in the course of a
18 bankruptcy the debtor and the individuals involved with
19 representing the debtor may come to different conclusions than
20 they did at the time of the initial petition, but your petition
21 was two days ago, so I would like to understand how it is so
22 much more expansive than it was on Tuesday.

23 MR. NELIGAN: Your Honor, you are correct. Based on
24 what we knew and the information we had, we thought three to
25 five hundred thousand. As we are getting more information --

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

5-28 Federal Court Hearing.txt

♀

22

F5S4LevC

1 again, this happens in almost every chapter 11 I have seen --
 2 the debtor's initial view of the debt in debtor's books and
 3 records on the amount of debt isn't necessarily the amount of
 4 debt or claims that would be filed in the case and/or claims
 5 that will arise. You are correct with respect to tort claims,
 6 potential tort claims, that is an issue for us to work through.
 7 I don't want to suggest that we have liquidated tort claims out
 8 there, but it is an issue that we're considering in the context
 9 of a plan of reorganization. It is common when a company or
 10 entity goes in, if there are potential tort claims, to try to
 11 deal with those. Nonetheless, the purposes of the petition, we
 12 were very careful to put down exactly what we understood the
 13 debtor's books and records reflected.

14 THE COURT: Okay. Mr. Neligan, let me ask you this:
 15 It seems to me that what we have been talking about for the
 16 past few minutes concerns the issue of whether the case was
 17 appropriately removed from state court to federal court, and so
 18 that is an issue and something I need to think about. Assuming
 19 for the sake of argument and to sort of forestall the remainder
 20 of this discussion that it was properly removed, must I not
 21 also consider whether mandatory or permissive abstention is
 22 appropriate? Don't those avenues exist irrespective of the
 23 state of the bankruptcy position?

24 MR. NELIGAN: Yes, your Honor.

25 Let me say, with respect to mandatory remand, that

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

23

F5S4LevC

1 does not exist here simply because there is diversity

5-28 Federal Court Hearing.txt

jurisdiction. It may not be removed for that, but there is diversity jurisdiction, and there is -- by virtue of the contribution claim, I think the better approach would be to have everything occur in a single forum. Certainly, I don't think because of the separate diversity jurisdiction, even if it wasn't removed for that, that by definition, then mandatory abstention would not apply.

Obviously, the Court has the discretion to remand, and that is certainly up to the Court. From our perspective, though, we think given -- certainly from the debtor's perspective, SMS Promotions, given the impact on the chapter 11, we would urge the Court to maintain this litigation in the Southern District. And I assume they are going to be seeking to file a motion to transfer venue to Connecticut, so that everything can be heard both in the context of the district court and the bankruptcy court with respect to the chapter 11.

THE COURT: I want to make sure we're speaking about the same thing. I think what you were just speaking to me about was my ability to have equitable remand powers under Section 1452(b). I also want to understand whether you or Mr. Renard or Mr. Gase will be addressing with me mandatory abstention under 1334(c)(2) and permissive abstention under 1334(c)(1).

MR. NELIGAN: I will defer to the litigators to

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

F5S4LevC

24

address both those issues.

THE COURT: All right. I'm sure Ms. Gase and Mr. Renard thank you for that.

I'm going to let you stand down for a moment. I want

5-28 Federal Court Hearing.txt

5 to talk to the folks at the front table. I have been asking a
6 number of questions of you. I would like to now talk to them.

7 Mr. Shkolnik --

8 MR. SHKOLNIK: Yes, your Honor.

9 THE COURT: -- it would be my preference to put to the
10 side the issue of whether removal was proper or not and to
11 focus on either my ability to remand equitably under 1452(b) or
12 the two versions of abstention that I have just talked about.
13 Unless you have something that you really want to engage on
14 with respect to the bankruptcy, I don't know that we really
15 want to go down the road of determining how related or not it
16 is.

17 MR. SHKOLNIK: Your Honor, that is fine. I want to
18 make one point.

19 THE COURT: Please, sir.

20 MR. SHKOLNIK: Just to clarify, you asked the direct
21 question about when was the filing for the bankruptcy --

22 THE COURT: Yes.

23 MR. SHKOLNIK: -- and I'm not quite sure that the
24 answer was accurate. We have in the notice of removal -- it is
25 Exhibit D, Docket 4 to 6, and I believe it is page-- I think it

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

25

F5S4LevC

1 is 6 of 78 -- under the bases of removal, it says that the
2 bankruptcy filing -- this is what they certified to the Court
3 May 25th. We know that the stamping and the computer
4 processing occurred the following day on the 26th, like the
5 same thing that happened us to here when we filed our papers
6 manually. It takes awhile for docketing. But I think, at
7 least according to the representation made both here and in the

5-28 Federal Court Hearing.txt

8 state court the other day, it was actually filed on the 25th.

9 THE COURT: Okay.

10 MR. SHKOLNIK: The second point I think for
11 clarification is -- and I know it is quibbling over time -- but
12 counsel did not appear in court until 2:25 in the afternoon on
13 Tuesday, and they missed a hearing held by Judge Wooten where
14 he outlined what he did, what the judge did, to determine if
15 there was a filing in the state court. He not only had his
16 court clerk contact the court clerk, the actual official clerk,
17 he got on the phone with the clerk of the court of New York
18 County -- I forgot the gentleman's name -- spoke to him
19 directly -- Milton Tingling -- pulled him out of a meeting,
20 actually, who then instituted an investigation in the clerk's
21 office, which I guess you know from practicing here in
22 New York, they may be a little overwhelmed down there, and they
23 did a search-and-destroy type of mission, and they identified
24 that no such paper was filed with the clerk. In fact, the
25 filing occurred at 2:27 in the afternoon. I just wanted to

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

26

F5S4LevC

1 correct the record in response to the question that you had
2 posed before.

3 As to the issue of the bankruptcy, I will defer any
4 references to that.

5 Thank you.

6 THE COURT: While you're standing, sir, I am now
7 told -- and I did not appreciate this until this hearing --
8 that actually diversity exists, as well. Do you agree?

9 MR. SHKOLNIK: I'm sorry. May I defer to counsel on
10 that?

5-28 Federal Court Hearing.txt

11 THE COURT: Mr. Rosenblum, are you speaking to this
12 issue?

13 MR. ROSENBLUM: Yes, your Honor.

14 I don't think any of us were aware that the issue of
15 diversity was going to be raised by the defense as some
16 additional ground --

17 THE COURT: Nor was I, sir.

18 MR. ROSENBLUM: What I'm saying now is, the benefit of
19 my thoughts without having researched this issue, I can tell
20 you what my understanding is, I will argue -- first, to answer
21 your question directly, there is diversity to the extent --

22 THE COURT: Don't give me air quotes. There is or
23 there isn't.

24 MR. ROSENBLUM: There is diversity because our client
25 is a Florida resident and Mr. Jackson is a Connecticut resident

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

27

F5S4LevC

1 and/or New York resident. So there is diversity between them.
2 But that doesn't resolve the question of whether or not
3 diversity could serve as a basis for the Court to have
4 jurisdiction. Based on the fact that this case has been
5 pending for over five years and based on the fact that
6 diversity existed the moment that this lawsuit was filed in New
7 York state court, it is my understanding of the law --

8 THE COURT: Did you say diversity existed at the time
9 -- which lawsuit was filed --

10 MR. ROSENBLUM: The New York state lawsuit. There's
11 diversity and there was diversity then because our client at
12 that time was a Florida resident when she filed the lawsuit and
13 Mr. Jackson was either a Connecticut or New York resident at

5-28 Federal Court Hearing.txt

14 that time. So my point is that diversity would have existed
15 the moment this lawsuit, meaning the New York underlying tort
16 action, was initially filed. We are now five-plus years since
17 that action was filed. My understanding of the law is that if
18 there is going to be a removal based upon diversity, that is
19 the grounds for removal. That must be done, I thought, within
20 and not to exceed a year of the initial filing if that is going
21 to be the basis for jurisdiction.

22 So I raise this simply because our argument would be
23 that although diversity exists, it is not a basis for
24 jurisdiction before this Court at this time because we are post
25 five years since that action was filed and the defendant never

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

28

F5S4LevC

1 sought to remove, never hinted about removal, and therefore,
2 this case could not be removed based on diversity jurisdiction.

3 THE COURT: But you are anticipating my question,
4 which is: Putting aside for the moment whether this case was
5 properly removed -- because I have had a long discussion with
6 Mr. Neligan, and I may not want to resolve the "related to"
7 issue. As you look at the factors that courts have identified
8 for mandatory abstention, one of them is that 1334 is the sole
9 basis for jurisdiction. And what I believe you're telling me
10 is that has, in fact, been satisfied here because even though
11 five years ago diversity could have been asserted, it is too
12 late now for it to be asserted, and therefore, that factor is
13 satisfied. Is that what you're saying, sir?

14 MR. ROSENBLUM: That is my argument.

15 THE COURT: Okay. All right. I understand that
16 argument.

5-28 Federal Court Hearing.txt

17 Mr. Skolnik, I want to talk to the folks at the back
18 table about mandatory and permissive abstention. I'm not sure
19 that they have been thrilled to have that thrust upon them by
20 Mr. Neligan. But is there anything else that I need to discuss
21 with you, sir, about the appropriateness of the removal?

22 MR. SHKOLNIK: No, your Honor. Just one other point
23 that follows from what counsel just mentioned. Assuming -- and
24 I'm not quite sure if Mr. Jackson is a New York or Connecticut
25 resident -- assuming he was a New York resident, which I think

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

29

F5S4LevC

1 can be argued, his ability to remove the case to federal court
2 I think would be lacking if it is simply for diversity
3 purposes. I don't think he would be able to do the removal
4 under the statute. That is one of the issues that I think we
5 weren't prepared to argue in length today.

6 THE COURT: Okay. Thank you.

7 Please understand, I have been preparing based on the
8 papers that I have received, and those papers include your
9 removal papers to get the case to me. It is news to me that
10 diversity exists or didn't exist, and I would like you to think
11 about what Mr. Rosenblum was saying about its applicability in
12 this setting. Let me hear from you on that and anything else
13 you would like to tell me.

14 MR. RENARD: Thank you, your Honor.

15 In what I'm about to say, I'm probably going to betray
16 an understanding of bankruptcy law that goes beyond my actual
17 understanding.

18 I'm actually looking at a draft response that we had
19 in the works to this motion, your Honor. Here is what I

5-28 Federal Court Hearing.txt

20 understand: Counsel is both correct and incorrect. In terms
21 of an ability to remove the case for diversity jurisdiction,
22 that time has passed.

23 By the way, the plaintiff, as I understand it, is a
24 Florida citizen. The defendant, Mr. Jackson, is a citizen of
25 the state of Connecticut. I heard it could be argued New York.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

30

F5S4LevC

1 He is a citizen of the state of Connecticut.

2 THE COURT: I think he wanted the clarity. You have
3 now confirmed it.

4 MR. RENARD: I guess the difference there, to the
5 extent that it is relevant, not being a citizen of New York but
6 rather being a citizen of Connecticut, being sued in New York,
7 he would have had the ability to remove because he is not a
8 citizen of New York.

9 That said, your Honor, there are two cases that I see
10 in this draft brief that I have not myself read but I
11 understand stands for the proposition that, as the court
12 pointed out, one of the factors for mandatory abstention is
13 that -- I'm sorry -- 1334 federal question is the sole basis of
14 the removal. I understand that there are two cases --

15 THE COURT: I think 1334 is the issue of bankruptcy --

16 MR. RENARD: Yes, I'm sorry, in issues of bankruptcy.

17 There are two cases that I have here to cite that
18 stand for the proposition that for the purposes of determining
19 whether mandatory abstention should apply that diversity
20 jurisdiction can be asserted in the responsive papers to a
21 motion for remand.

22 THE COURT: Sure, but in those cases, had they

5-28 Federal Court Hearing.txt

23 exceeded the one year threshold that Mr. Rosenblum has called
24 to my attention?

25 MR. RENARD: I'm not sure.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

31

F5S4LevC

1 But what it would stand for, the proposition by
2 definition, is that that wasn't the basis on which it was
3 removed because these cases stand for the proposition you can
4 first bring it up.

5 THE COURT: You have answered my initial question and
6 not my new question. But go ahead, please tell me those cases.

7 MR. RENARD: Your Honor, the first is Lead I Joint
8 Venture v. North Fork Bank, 401 B.R. 571, pinpoint cite at 582.
9 That is Eastern District, New York, 2009. The second is a West
10 Law cite. Pennock v. Dean, 2007, W.L. 542132 at *8. That is
11 the Western District of New York, February 2007.

12 That is the best I have to offer on that, your Honor.
13 I don't claim to be knowledge about that particular point or
14 that case law other than I'm a messenger there in terms of
15 passing along what was in the draft.

16 THE COURT: Okay. Are you going to be telling me
17 anything else that is in that draft response brief or in the
18 consciousness of either counsel about why it is this is not an
19 appropriate case for mandatory abstention? And maybe that is
20 your argument. And why is this not an appropriate case for
21 permissible abstention or --

22 MR. RENARD: Well, I understand Me. Neligan kicked
23 that back to us. I understand that the relationship between
24 the bankruptcy and the fact that Mr. Jackson has control of
25 that bankruptcy and the fact that entity needs immediate

5-28 Federal Court Hearing.txt

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

32

F5S4LevC

1 attention, financial and managerial, in connection with the
2 bankruptcy, and the fact that we have this case, it is the
3 relationship between the two, your Honor. I apologize I'm not
4 better prepared to address that fact.

5 THE COURT: Perhaps we can go through a couple of
6 factors, and you can tell me whether you contest them or not.

7 MR. RENARD: Sure.

8 THE COURT: In the mandatory abstention context -- and
9 I'm using factors that have been set forth in a couple of
10 different cases trying to get sort of a wide range -- the first
11 question is: Was the application timely brought? I think you
12 would concede it was, yes? The application for remand or
13 abstention is within a day or two of your removal.

14 MR. RENARD: Yes.

15 THE COURT: And the proceeding before me would have to
16 be based on a state law claim. My understanding of this
17 litigation suggests that it is; correct?

18 MR. RENARD: Yes, your Honor. Statutory claim and
19 common law claim.

20 THE COURT: The issues here in the case before me
21 relate to but do not arise out of title 11. What we're talking
22 about right here are not bankruptcy claims. Do you agree that
23 that has been satisfied?

24 MR. RENARD: Yes.

25 THE COURT: The one where we may have some interesting

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

33

F5S4LevC

5-28 Federal Court Hearing.txt

1 issue is whether 1334 is the sole basis for jurisdiction. I
2 think we just had that communication right now. The question
3 is: Is there an action commenced in state court? I think that
4 is very interesting existentially because it was and now it is
5 here. That might be satisfied.

6 The sixth is that the proceeding, which in my mind is
7 this proceeding if it were to go back to state court, can be
8 timely adjudicated in state court. And I would think, sir,
9 given the pendency of a trial date, it is sort of tough to
10 argue that this would be forever in some state court backlog.
11 It seems to me that your arguments are at points four and five.
12 Do you agree?

13 MR. RENARD: I think, your Honor, that that is
14 correct. Not having the enumerated points in front of me but
15 having it somewhere in the brief the Court hasn't seen, yes,
16 your Honor.

17 I will mention one thing for what it is worth.
18 Mr. Neligan alluded to this fact. We attempted once we came in
19 to bring in the rapper, Rick Ross, whose allegation we have
20 made that on Mr. Ross' website is the first time this full
21 video was posted. We tried and failed to bring Mr. Ross in
22 within the past 60 days into the state court suit. We have
23 since sued Mr. Ross. That is certainly related to this action
24 and the whole idea of contribution and who is ultimately
25 responsible for damages, if any, that the plaintiff has

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

34

F5S4LevC

1 suffered. That has been filed. That, too, has been removed,
2 as Mr. Neligan alluded to. If we had the chance, we would seek

5-28 Federal Court Hearing.txt

3 to transfer that all in and adjudicate all at the same time. I
4 just throw that out there because that is a factor that is
5 related to the desire to remain in federal court.

6 THE COURT: I appreciate your letting me know this
7 because this is the first time hearing about this lawsuit.
8 Actually, I suppose Mr. Neligan's aversion to it is the first
9 that I'm hearing about it. But I haven't seen it. I don't
10 know whether there has been an attempt to relate it to whatever
11 judge was assigned to this case, who happens to be me. I
12 understand there is something else in the offing, and we will
13 have to see what to do with that.

14 Sir, there is, as well, permissive abstention, and I
15 don't know if you want me to talk to you about these. These
16 are a little bit more fluid factors, they're not necessarily
17 ones for which there are "yes" or "no" answers. Perhaps you
18 might want to just look at the draft that I know you wanted to
19 submit to me and make for me, sir, what you think are the
20 strongest arguments as to why I should not remand this matter
21 and why I should not abstain.

22 MR. RENARD: Your Honor, I confess, on the short
23 notice -- and nothing is wrong with the short notice given the
24 circumstances of this case -- I wasn't prepared to go through
25 that. I would just say that I know Mr. Neligan referenced back

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

35

F5S4LevC

1 to us. If there is anything he can add to this, it would be
2 helpful. But your Honor, in terms of going through this, I'm
3 just not prepared. I apologize.

4 THE COURT: Don't apologize.

5 MR. RENARD: I have to confess.

5-28 Federal Court Hearing.txt

6 THE COURT: Have you read the draft, sir?

7 MR. RENARD: I have looked over portions of it. I was
8 focusing on in the few minutes here the mandatory abstention
9 because I heard the issue come up. I was not involved in its
10 drafting.

11 THE COURT: I understand.

12 Ms. Gase, are you in any better position to speak to
13 this?

14 MS. GASE: No, your Honor. I was not involved in the
15 drafting in any way.

16 THE COURT: May I assume there is no one in the
17 courtroom whom you can conscript to aid in talking about what
18 they drafted --

19 MR. RENARD: It would be a stranger --

20 THE COURT: I understand. There are very thoughtful
21 law clerks and interns back there. I don't believe they can be
22 conscripted by you at this time.

23 Mr. Neligan, there is a suggestion, sir, that though
24 you're not here, you might still be the person to talk about
25 with respect to abstention. If there is any insight or

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

36

F5S4LevC

1 argument you would like to make to me on this topic, I would be
2 happy to hear from you.

3 I hope it is evident from the questions that I have
4 posed to the parties here so far that I have actually looked at
5 this issue. I have spent the last 24 hours thinking about
6 this, and I have conscripted those people behind you and to my
7 right to look at these issues. It is not as though I'm simply
8 accepting plaintiff's counsel's representations. I'm kicking

5-28 Federal Court Hearing.txt

the tires as to these claims, but I do want to hear from you.

Mr. Neligan, what do you want to tell me?

MR. NELIGAN: Your Honor, with respect, I think you were asking about permissive abstention. With respect to that, the courts look at factors such as the impact on the efficient administration of the bankruptcy estate, you know, the extent that you have state law issues, the issue of the prejudice to the parties. And from our standpoint, first, we think it is very clear that Mr. Jackson's position with the debtor and his ability to finance the debtor is the only real viable means of having the plan of reorganization to deal with the creditor claims in this bankruptcy. So we think, clearly, that factor militates in favor of keeping the litigation in federal court.

THE COURT: I guess an issue I'm having in this regard -- and I know this may seem gauche -- I'm trying to get a sense of Mr. Jackson's assets. If you said to me that the claims, the liabilities may have been an outside figure of

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

37

F5S4LevC

\$500,000 but actually it is approaching two or three million dollars and Mr. Jackson has but \$5 million to his name, that is one thing. There has been a suggestion in plaintiff's papers that he is worth significantly more than that. I guess I'm trying to understand whether you believe that he is going to be losing his shirt in the SMS venture. I appreciate you might not want to give the specifics of every dime that he may have in whatever holdings, but I need to have at least a sense of the magnitude that we're talking about, because his situation, given his career and his holdings, I suspect is far different from mine as a government employee.

5-28 Federal Court Hearing.txt

Can you speak to me on that issue?

MR. NELIGAN: Yes, your Honor. And aside from the fact, in the plaintiff's case, they refer to a listing by Forbes, which may or may not be accurate, and I will also say I'm not intimately familiar with Mr. Jackson's complete financial position, but there seems to be -- and I have seen this in bankruptcies where there is a confusion between net worth and liquidity, the ability of a person or company to actually pay those debts as those debts become due and to fund, in this case, a plan of reorganization. Regardless of Mr. Jackson's net worth, the question is his liquidity, his ability to fund this plan of reorganization. And frankly, there may be other businesses that ultimately have to go into chapter 11, all of which will require funding.

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

38

F5S4LevC

The question I would submit is not necessarily Mr. Jackson's net worth but his liquidity, his ability to fund a plan and to fund various obligations of his different investments.

THE COURT: Again, Mr. Neligan, I'm going to have to interrupt. You concerned me a moment when you said that there may be other businesses that have to go into reorganization. Perhaps I misheard you. Today I have one petition. I should consider that one petition in deciding what to do with respect to the litigation that was removed to me. You're not suggesting that I should be mindful or that I should take into account the possibility that somewhere down the road he will seek to reorganize other entities of his; are you?

MR. NELIGAN: Your Honor, I'm representing SMS, and I

5-28 Federal Court Hearing.txt

can speak to that. Again, I appreciate the Court's position because you have to rule on what's before you. But I think -- again, I go back to the whole timing issue -- because in this litigation, which I think has prompted a focus on his cash requirements for those investments and his ability, if there was a worst-case scenario of a judgment, his ability to pay that and still try to maintain his various businesses, from which his net worth derives.

So my point, though, is that in considering this, in considering related to jurisdiction, the nexus is very close. And to the extent that the Court is considering this, I would

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

39

F5S4LevC

urge the Court to allow this matter to remain in federal court. If the plaintiffs want to seek to have the bankruptcy court make a decision as to that nexus, they're certainly free to do so. But in the first instance, that nexus, the connection between Mr. Jackson and the debtor I think is very strong and there is nothing I have heard here that would even put that into question.

And the notion that Mr. Jackson is so wealthy that somehow he doesn't really need to worry about the various investments he has and his cash needs confuses net worth with liquidity, and it is only through liquidity and having the cash that he is going to be able to keep up his investments. I think that reference to Forbes, even assuming it is correct, really misses the mark here as to Mr. Jackson's needs and the needs of SMS Promotions.

THE COURT: Mr. Neligan, by the same token, I am troubled by a precedent or at least a practice that would

5-28 Federal Court Hearing.txt

18 suggest that in anticipation of the possibility of getting a
 19 judgment against you, when of course Mr. Jackson is going to
 20 fight very hard to have no judgment against him, simply in
 21 anticipation that he could file for bankruptcy suggests that
 22 there are these liabilities and potentially many more and to
 23 then remove that case to bankruptcy court, that seems quite odd
 24 to me. I can understand going into bankruptcy when you have a
 25 judgment, but it sounds like he is just immediately arriving at

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

†

40

F5S4LevC

1 the worst-case scenario that reorganization is necessary
 2 because of the mere prospect of a judgment against him. That
 3 is what I'm having difficulty understanding. Please help me
 4 with that.

5 MR. NELIGAN: Absolutely, your Honor.

6 The fact is it is the possibility of the judgment that
 7 triggers the analysis of the various investments, what needs to
 8 be done to make sure those investments have maximized their
 9 value and so that he can, in fact, retain his net worth. It is
 10 not just sort of a concern about a worst-case scenario that may
 11 or may not occur. It is that concern, though, which triggers I
 12 think a very hard analysis of where his businesses stand at the
 13 moment and what those businesses are going to require in the
 14 future. And I do want to sort of address this timing issue
 15 because I understand the bankruptcy filing on Tuesday, the
 16 Court has concerns about that. But understand, from my
 17 perspective and debtor's counsel, we looked at this and wanted
 18 to make sure that bankruptcy could do something for SMS
 19 Promotions. I'm sure the Bickel & Brewer lawyers would have
 20 preferred that the filing had occurred earlier. Until we

5-28 Federal Court Hearing.txt

21 investigate it and understand what we could do in a bankruptcy
22 and why it was needed, we were not going to file SMS
23 Promotions. If that has caused inconvenience, I'm sorry, but
24 we take our responsibility very seriously.

25 And here it is not a question of just sort of throwing

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

†

41

F5S4LevC

1 it into bankruptcy because of a hypothetical worst-case
2 scenario. It is a question of once there is an intent to focus
3 on what these entities need and whether or not these businesses
4 are viable and whether the cash needs of those businesses make
5 sense, it is that analysis which then leads to the bankruptcy.
6 It is not just sort of a hypothetical concern going forward.

7 Again, I have to say I understand the plaintiff's
8 concerns, but at the same time, nobody is trying to preclude
9 the plaintiff from moving forward in their litigation. They
10 will get their day in court. Hopefully, their day in court is
11 a day in court to which all the parties are in one forum, but
12 they will get their day in court. They may not get it in state
13 court, but they will get their day in court. So there is no
14 preclusion or elimination of a remedy that they might otherwise
15 have. On the other hand, from the standpoint of SMS
16 Promotions, it is critical to the reorganization to have
17 Mr. Jackson's commitment and ability to fund that.

18 THE COURT: All right. Anything else, sir?

19 MR. NELIGAN: No, your Honor.

20 THE COURT: Thank you. You can stay there. I want to
21 hear from plaintiff's counsel now.

22 MR. SHKOLNIK: Can I mention one follow-up, your
23 Honor --

5-28 Federal Court Hearing.txt

24

THE COURT: Yes, sir.

25

MR. SHKOLNIK: -- before a question is posed.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

42

F5S4LevC

1

The hypotheticals we're hearing about Mr. Jackson and

2

what his finances are, it is kind of ironic, because at the

3

time he filed -- or the time SMS filed for bankruptcy, he chose

4

to give a statement publicly to the press about his

5

\$1.6 million win on the Mayweather fight, and therefore SMS is

6

really not a big deal. It is kind of ironic that these

7

arguments are being made today.

8

THE COURT: You say ironic; I may say puffery, sir.

9

What I'm understanding from this litigation, because I have

10

read a fair amount into it, is that sometimes how one presents

11

is more important than what one has. I understand what Forbes

12

says. I don't know that they were given access to all of his

13

bank records. I'm sure he didn't mind being referred to with

14

that magnitude of wealth.

15

MR. SHKOLNIK: I understand. He did give a statement

16

that he did win that bet for 1.6 million.

17

THE COURT: He did, sir.

18

Let me understand from you, sir, first of all, let's

19

focus on the mandatory abstention issue --

20

MR. SHKOLNIK: Yes, your Honor.

21

THE COURT: -- the two points of contention, which is

22

1334 and whether the action was commenced in state court. On

23

the first of them, I think Mr. Rosenblum has given me your

24

argument on that front. Is that correct, sir?

25

MR. SHKOLNIK: Yes, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5-28 Federal Court Hearing.txt

♀

43

F5S4LevC

1 THE COURT: I want to make sure I understand, and
2 perhaps I'm parsing the language too narrowly, the action was
3 commenced in state court and it was removed here. I don't know
4 whether this particular factor speaks of other actions that I
5 should be thinking about or whether this is the action I am to
6 focus on. Do you have any insight into that, sir?

7 MR. SHKOLNIK: I may be confused there. There is no
8 question it was started in state court and removed here.

9 THE COURT: Your confusion is because of my question,
10 so I will make a better one.

11 One of the factors for mandatory abstention is a
12 question of whether there was an action commenced in state
13 court. I thought, at least, an action that began in state
14 court, ended up here, and is being asked to be remanded back,
15 that that satisfies that particular factor, but if it doesn't,
16 I want you to tell me.

17 MR. SHKOLNIK: Your Honor, we submit that it would
18 have to be a timely removal of the action to meet that factor,
19 and I think that's where they wholly failed here.

20 THE COURT: I'm sorry. I'm going to try it again.
21 It's The fifth factor. Mr. Rosenblum, do you know what I'm
22 talking about?

23 MR. ROSENBLUM: I do.

24 THE COURT: If he knows it, let him answer.

25 MR. ROSENBLUM: I do, and I agree with what the Court

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

44

F5S4LevC

1 suggested our interpretation would be; namely, that because we
Page 39

5-28 Federal Court Hearing.txt

2 initiated and commenced an action in state court, which was
3 then removed to this court, we believe that that satisfies that
4 criterion that an action be commenced.

5 THE COURT: So we're left with a point of dispute
6 about the fourth criteria, which is --

7 MR. ROSENBLUM: Yes, your Honor.

8 THE COURT: I understand that better.

9 Mr. Shkolnik, do you want to speak to permissive
10 abstention?

11 MR. SHKOLNIK: Yes, your Honor, I would be happy to.

12 THE COURT: Thank you, sir.

13 MR. SHKOLNIK: Are there questions posed, or do you
14 want me to make the argument?

15 THE COURT: Sir, I had a lovely discussion with
16 Mr. Neligan on the topic. There are factors that he has
17 identified: The effect on the efficient administration of the
18 estate, the extent to which issues of state law predominate --
19 I think that one is in your column; the difficulty or unsettled
20 nature of state law; comity; the relatedness or the remoteness
21 of the bankruptcy proceedings; the existence of a right to a
22 jury trial, and the prejudice to involuntarily remove
23 defendants. There is also sort of a secondary set of factors,
24 and they include the presence of a related proceeding in state
25 court and the likelihood that all of this is the product of

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

45

F5S4LevC

1 forum shopping.

2 So I know your view on the last one. I don't need to
3 hear it. I don't think that -- I don't think that all of these
4 need equal time. Give me a couple of points, please.

5-28 Federal Court Hearing.txt

MR. SHKOLNIK: Your Honor, I will go through them individually.

I think we have heard a lot of discussion about how important it is to have this case in federal court for the efficient administration of the bankruptcy estate, but I don't think we have seen or heard anything that really supports that contention. There is nothing about the individual lawsuit being brought by Ms. Lastonia against Mr. Jackson that truly is going to affect the administration of the bankrupt estate. They will be able to process the estate in a very orderly fashion, and it doesn't really appear, other than what we're now hearing all of a sudden about these potential brain injury claims, which we have heard talk about brain injury claims, but no one suggested anyone has brought one, no one has alleged one, no one has ever filed one against SMS. It seems like it is more grabbing at potential claims that may be out there one day. Really, there is no reason for this Court to be looking at the orderly administration as a real basis here.

With respect to whether or not state laws predominate, I think the Court already addressed that, and counsel conceded that that factor is no question.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

46

F5S4LevC

Whether or not there has been unsettled law or difficulty with respect to unsettled law, I don't think anyone is arguing that point. I think the underlying claims are something that are, at best, determined at the state level, and I don't think they're unsettled at all.

The comity, I think comity is a very important point here and I think needs to be addressed, and it goes

5-28 Federal Court Hearing.txt

8 hand-in-hand with the forum shopping. We have a situation that
 9 we have a state court judge that has been administering this
 10 case for years. He is sitting in a courtroom, sitting on the
 11 bench waiting for lawyers, and has a jury ready to go to start
 12 selecting. The judge has considered the issues. The judge has
 13 issued some important substantive rulings, as well as important
 14 administrative rulings in terms of scheduling and setting up
 15 the court system. I think the idea of pulling that case into
 16 federal court so plaintiff can get justice at some time in the
 17 future, as counsel suggested, is doing the opposite of this
 18 court respecting the state court. There is nothing calling out
 19 in this case to say plaintiff should all be brought here to try
 20 this case somewhere down the road when this court is available,
 21 or whether or not it should go to Connecticut I think is
 22 another suggestion that was made. I think that comity really
 23 lies in our favor in this situation. If something had been
 24 done five years ago before the defendants litigated every issue
 25 very aggressively, maybe it would be on an even keel, but it

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

47

F5S4LevC

1 certainly is not.

2 With respect to relatedness or remoteness to the
 3 proceeding in the main bankruptcy case, I think this is one of
 4 the most important issues for the Court to consider right now.
 5 I think the Court has correctly identified certain issues that
 6 how does the bankrupting of one small entity that this
 7 defendant has really dictate a decision that a case that has
 8 been pending for five years against him in an individual
 9 capacity should really trump everything. And here you have
 10 Mr. Jackson, who has, among other corporations, his SMS boxing

5-28 Federal Court Hearing.txt

11 and then his G-Unit, then his SMS Audio, and we don't know how
12 many other corporations, none of which they chose to bankrupt.
13 The concern is Mr. Jackson may have to conserve his assets. If
14 he is worried about a judgment in this case, why isn't he
15 personally filing a bankruptcy petition. It seems like it is
16 the cart leading the horse here.

17 So I think the argument that you have to look at is,
18 is it remote, and this is certainly remote. This individual
19 case against Mr. Jackson, among many other lawsuits he has
20 pending against him, against him and as plaintiff -- he is
21 quite the litigious individual -- it is just too remote. It
22 really is. This was a grab at a way to get an adjournment,
23 which they couldn't get on multiple occasions. They knew they
24 would get an adjournment of the trial by doing this. I don't
25 think they expected a motion to remand as quickly as it came.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

48

F5S4LevC

1 With respect to a right to a jury trial, I think it is
2 equal in both. I think it goes both ways.

3 I'm sorry. I meant here. I'm sorry. Your court.

4 THE COURT: Your claims have a jury trial component.
5 Your claims are entitled to a jury consideration.

6 MR. P. FREIDIN: They are going to move to transfer it
7 to bankruptcy, where there is no jury trial.

8 MR. SHKOLNIK: We are on the same keel here, but I
9 think counsel on the phone made it very clear what the next
10 step was, everyone should go over to Connecticut, where we will
11 not get the jury trial, which is something our client has
12 waited for for five years and she is entitled to.

13 I'm sorry. I went too slow to getting to the point.

5-28 Federal Court Hearing.txt

14 I apologize.

15 THE COURT: Now everybody gets to talk.

16 MR. SHKOLNIK: And certainly the prejudice --

17 THE COURT: That is not applicable here.

18 MR. SHKOLNIK: I was going to say that, your Honor.

19 THE COURT: Thank you.

20 I'm going to take five minutes, and then I will come
21 back and give you a decision.

22 Mr. Neligan, do you want to remain on the line, or do
23 you want to speak with Mr. Renard and Ms. Gase later on?

24 MR. NELIGAN: I can remain on the line, whatever is
25 convenient for the Court. I'm fine being here.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

49

F5S4LevC

1 THE COURT: I have no additional questions for you,
2 sir. That is entirely up to you, sir. If you want to stay,
3 you can stay.

4 I'm going to get off the bench for five minutes and
5 then come back.

6 (Recess)

7 THE COURT: I will tell you what I'm not going to talk
8 about, which is the appropriateness or the propriety of
9 removal. I will give that to the defendants at this time. And
10 I'm not going to talk about mandatory abstention because I have
11 questions about the fourth factor. But I want to talk about
12 permissive abstention, and I want to talk about equitable
13 remand. Where this comes out is as follows: I can't help but
14 be struck by the sequence of events in this case; that there
15 was a litigation commenced in what I believe was February of
16 2010 that has gone through the rather tortuous path it has to

5-28 Federal Court Hearing.txt

17 the point of there being a trial set; and that the parties were
18 ready; and that there were these applications beforehand to
19 adjourn the trial, and then those applications had not been
20 granted.

21 I have talked with Justice Wooten; and figuratively,
22 if not literally, he is sitting in his chambers right now
23 trying to figure out what he is going to do with the next two
24 and a half weeks of his time. He wants to know what is going
25 on. That's why I had the parties come in today. I told him I

♀ SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300
F5S4LevC 50

1 would resolve it promptly and let him know. So I'm going to do
2 that.

3 I appreciate that the preparations for trial may cause
4 counsel and may cause the litigants to think more clearly and
5 with greater gravitas about the issues in the case. That all
6 being said, I really do think defense counsel should have given
7 some hint to plaintiff's counsel that a bankruptcy petition was
8 in the offing. I think it is unfortunate. I certainly can
9 imagine they wouldn't have appreciated it if the roles had been
10 reversed, finding out at this last minute.

11 Looking at the factors of permissive abstention, which
12 I have outlined and discussed with Mr. Neligan and
13 Mr. Shkolnik, this state case is mighty far along. We're five
14 years into it. There have been many substantive motions.
15 We're at the moment of trial when all of this is happening. So
16 what I'm asked to consider is the degree to which this
17 bankruptcy filing is enough to require it to be moved to, not
18 only to federal court, but to bankruptcy court in Connecticut.
19 That's the ultimate destination that defendant seeks. I don't

5-28 Federal Court Hearing.txt

20 believe that I can do that. This is the bankruptcy -- not of
 21 the individual defendant -- of a company of his, one of several
 22 companies of his. It is far too removed from the facts of this
 23 litigation. I don't really see that it has any relevance to
 24 this litigation. I appreciate that Mr. Neligan has explained
 25 to me how it is related to, but I happen to think that that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

♀

51

F5S4LevC

1 only suffices under a very, very broad reading of any
 2 conceivable effect, which is the standard. I think too many
 3 stars have to be aligned in a particular way before it matters.

4 I also noted with interest comments by Mr. Neligan
 5 that Mr. Jackson is necessary because he is the only person who
 6 can finance SMS, the debtor, and is the only person who can
 7 assist in realizing a viable plan of reorganization; actually,
 8 it is not even assist, he is the key to a viable plan of
 9 reorganization. While I appreciate Mr. Neligan's concern have
 10 to be with the SMS debtor, I'm just not convinced that the
 11 state court action is going to impede the ability of
 12 Mr. Jackson to fund, if he so desires, the continued existence
 13 and operation of the SMS entity. And I'm not going to consider
 14 the possibility that other businesses may go into
 15 reorganization because there's been no such petition filed.

16 I'm giving very, very attenuated weight, if any, to
 17 the notion of these concussion cases.

18 So I've thought about permissive abstention because I
 19 think it is appropriate for me to abstain here, and I'm going
 20 to do it.

21 In the alternative, because these are often considered
 22 together, I am using my abilities under 1352(b) to engage in

5-28 Federal Court Hearing.txt

23 equitable remand of the case.

24 For the parties, they are wondering what does that
25 mean. What that means is I'm going to issue an order in the

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

52

F5S4LevC

1 near term. And I will talk to our clerk's office about making
2 sure that it gets on the docket as soon as possible. That
3 order is going to remand the case back to the State Supreme
4 Court of New York County. It is also going to provide a
5 schedule for the defendants to respond to the fee and cost
6 application because I didn't think they wanted to do that here,
7 and I don't need to do that today. I will put in some time for
8 that.

9 As I mentioned, I have spoken with Justice Wooten, so
10 I think he or his law clerks are expecting your call after
11 these proceedings, and I think this trial is going forward.

12 Let me end, as I should have begun, by thanking the
13 parties for the work they have done. Mr. Neligan, I appreciate
14 very much the insights into bankruptcy law that you have given
15 me, and I will tell you that your arguments make more sense to
16 me than they did just in reading the plaintiff's papers. That
17 should not come as a surprise. I do appreciate the
18 clarifications you have given. I do appreciate the cases that
19 were cited to me by the plaintiff's team. I appreciate
20 Mr. Renard and Ms. Gase's efforts to explain to me the
21 litigation and what has happened.

22 Just too much has happened in the state court for me
23 not to let it finish out its proceedings there. I will be
24 remanding; or if you prefer, I will be engaging in permissive
25 abstention. Either way, the motions of the plaintiff are

5-28 Federal Court Hearing.txt

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀

53

F5S4LevC

1 granted. I will issue the order soon, and I thank you for
2 coming in.

3 With that, Mr. Neligan, I'm going to let you go.
4 Thank you very much, sir.

5 MR. NELIGAN: Thank you, your Honor.

6 THE COURT: Thank you very much.

7 (Adjourned)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SOUTHERN DISTRICT REPORTERS, P. C.

(212) 805-0300

♀